



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 6, 1994

Ms. Susan M. Cory
General Counsel
Texas Workers' Compensation Commission
Southfield Building, MS-4D
4000 South IH-35
Austin, Texas 78704

OR94-326

Dear Ms. Cory:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552.¹ We assigned your request ID# 18917.

The Texas Workers' Compensation Commission (the "commission") has received a request for information relating to the receipt and processing of attorney fee applications. Specifically, the requestor seeks:

1. All public information, including statements of policy and interpretations which have been adopted by the Texas Workers' Compensation Commission and its staff concerning Article 8308-4.09, Article 8308-4.091, and associated adopted rules.
2. All administrative staff manuals and instructions to staff concerning the processing and handling of submitted Forms TWCC-152 and approval/disapproval of attorney fees submitted, and the mailing of copies of the orders to the attorney, claimant, and carrier.

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

3. All administrative staff manuals and instructions to staff concerning Article 8308-4.09, Article 8308-4.091, and associated adopted rules.

4. All information concerning the adoption of Form TWCC-152 and concerning the processing of Form TWCC-152 by the Texas Workers' Compensation Commission and its field offices, including the review of applications, orders concerning fees, and the mailing of orders to the attorney, claimant, and carrier.

5. All public information concerning the hourly rates for attorney and paralegal fees by the Texas Workers' Compensation Commission, including the results of all informal surveys conducted concerning same.

6. All reports, audits, evaluations, and investigations made of, for, or by the Texas Workers' Compensation Commission regarding the review of Form TWCC-152, the entry of orders concerning attorney fees, and the mailing of copies of the orders to the attorney, claimant, and carrier.

7. All public information concerning the number and approval of Forms TWCC-152 submitted and approved per field office on a monthly or weekly basis, from January, 1991, to the present.

You advise us that some of the requested information has been or will be made available to the requestor. You object, however, to the release of the remaining information, which you have submitted to us for review, and claim that sections 552.101, 552.108, and 552.111 except it from required public disclosure.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert section 552.101 in conjunction with section 402.083 of the Labor Code (formerly V.T.C.S. art. 8308-2.31), which makes confidential "[i]nformation in or derived from a claim file regarding an employee." In Open Records Decision No. 619 (1993) at 10, this office determined that section 402.083 makes confidential information that explicitly or implicitly discloses a claimant's identity. Explicit information includes, for example, the claimants' names, spouses' names, social security numbers, and home telephone numbers and addresses. *Id.* Implicit information may include the birthdate of an employee or other information the release of which would tend to identify the employee. *Id.* We have examined the information submitted to us for review and have marked the information that the commission must withhold under section 402.083 of the Labor Code. The remainder of the requested information, however, is not made confidential by that statute.

You also assert section 552.101 in conjunction with the informer's privilege. The informer's privilege has been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of *citizens* to communicate their knowledge of the commission of crimes to law-enforcement officials and, by preserving their anonymity, encourages them to perform that obligation. [Emphasis added.]

The informer's privilege aspect of section 552.101 protects the identities of persons who report violations of the law. The content of an informer's communication may be withheld where it is necessary to protect the informer's identity. Open Records Decision No. 377 (1983). When information does not describe conduct that violates the law, the informer's privilege does not apply. Open Records Decision Nos. 515 (1988); 191 (1978). Although the privilege ordinarily applies to the efforts of law enforcement agencies, it can apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 285, 279 (1981); *see also* Open Records Decision No. 208 (1978).

You have submitted to us for review information generated in the course of the commission's investigations of attorneys practicing before the commission. The purpose of the investigations was to determine whether the attorneys falsified attorney fee applications. Some of the witness statements that you seek to withhold under the informer's privilege appear to have been taken from former employees of the attorneys in response to questions presented to them. Other witness statements appear to have been taken from commission employees in response to questions presented to them in the scope of their employment. Moreover, it appears that the commission contacted the attorneys' employees and the commission's employees for purposes of eliciting responses, but that the witnesses did not contact the commission of their own volition to report possibly criminal or illegal behavior. Although the information that the witnesses provided the commission about the attorneys could be construed as revealing criminal or illegal behavior, it is apparent from the interviews themselves that the witnesses did not consider themselves to be reporting criminal or illegal behavior. Accordingly, we conclude that the informer's privilege in this instance does not apply to the requested information. *See* Open Records Decision No. 579 (1990) at 8.

Next, we address your assertion that section 552.108 excepts the requested information from required public disclosure. Section 552.108 provides that:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure].

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure].

Gov't Code § 552.108. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. *See generally* Open Records Decision No. 127 (1976). Otherwise, when the "law enforcement" exception is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)).

We understand that the commission referred the investigations at issue here to the Harris County District Attorney's Office. The Harris County District Attorney's Office, however, informs us that it has closed its investigations, having chosen not to pursue prosecution. On the basis of these facts, we conclude that there is no law enforcement investigation to which the requested information relates. In addition, you have not demonstrated, nor does the submitted information demonstrate on its face, how release of the requested information would unduly interfere with law enforcement. We conclude, therefore, that the commission may not withhold the requested information under section 552.108 of the Government Code.

Finally, you claim that section 552.111 of the Government Code excepts some of the requested information from required public disclosure. Section 552.111 excepts information that constitutes an "interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the section 552.111 exception and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *Id.* at 5. Section 552.111 does not except purely factual information from disclosure. *Id.*

We have reviewed the information submitted to us for review and conclude that some of it constitutes advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. This information has been marked and may be withheld under section 552.111 of the Government Code. The commission, however, except as noted above, must release the remaining information in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,

A handwritten signature in black ink that reads "Margaret A. Roll". The signature is written in a cursive, flowing style.

Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/GCK/rho

Enclosures: Marked documents

Ref.: ID# 18917
ID# 19098
ID# 19260

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(w/o enclosures)